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**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case Reference** : **LON/00AR/OLR/2013/0988**

**Property** : **37 Lodge Court, High Street,  
Hornchurch, Essex RM12 6QR**

**Applicants** : **Alan Foskett and Kim Elledge**

**Representative** : **Moss & Coleman, solicitors**

**Respondent** : **Daejan Properties Limited**

**Representative** : **Wallace LLP, solicitors**

**Type of application** : **For the determination of the  
premium to be paid for a new lease**

**Tribunal members** : **Margaret Wilson  
Neil Maloney FRICS  
Naomi Hawkes**

**Date of determination** : **26 November 2013**

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## DECISION

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1. This is an application under section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act") for the determination of the price to be paid for a new lease of 37 Lodge Court, High Street, Hornchurch. 37 Lodge Court is a ground floor flat in a development of two-storey terraces of similar purpose-built 1930s maisonettes, set around a central green. The flat has two bedrooms, a living room, kitchen and bathroom and a small rear garden, together with use of communal gardens. It is held on a lease for a term of 99 years from 24 June 1971 at an annual ground rent of £20, fixed throughout the term. At the valuation date, which is 15 November 2012, approximately 57.5 years of the term remained unexpired.

2. At the hearing of the tenants' application on 26 November 2013 the tenants were represented by Gerald Haddington, solicitor, of Moss & Coleman, solicitors, who called David Parish FRICS of Gates, Parish & Co, chartered surveyors, to give evidence of value. The landlord was represented by Tamsin Cox, counsel, instructed by Wallace LLP, solicitors, who called Genevieve Mariner BSc (Hons) FRICS of Strettons, chartered surveyors, to give evidence of value.

3. The following matters were agreed before the hearing:

- i. the unimproved value of the virtual freehold is £175,000;
- ii. the appropriate capitalisation rate is 7%; and
- iii. the appropriate deferment rate is 5%.

4. The only issue was the relativity of the 57.5 year lease to the freehold. Mr Parish for the tenant considered that it was 83.63%, on the basis of which he arrived at a premium of £19,750. Ms Mariner for the landlord considered that it was 77%, producing a premium of £25,515.

5. In his written report prepared for the hearing Mr Parish had referred to and relied exclusively on five graphs of relativity: a graph produced by Beckett and Kay based on data from 2008, a graph produced by South East Leasehold based on an analysis of sales and questionnaires carried out in 1997, a graph produced by Nesbitt & Co based on settlements and tribunal decisions in respect of cases in which he had appeared, all prior to 2009, a graph produced by Austin Gray based on settlement and transaction data prior to 2008, and a graph produced by Andrew Pridell based on opinion, settlements, transactions and tribunal decisions up to August 2008. Those graphs showed relativities for the 57.5 year lease of 82.08%, 87.5%, 81.5%, 82.85% and 84.25% respectively, which he averaged to arrive at his proposed relativity.

6. In his oral evidence in chief he was asked about settlements he had negotiated with Ms Mariner in 2012 in respect of four flats in Lodge Court where premiums were agreed at relativities of 80.3% for leases with 58.18

years unexpired. He said that there were special circumstances surrounding those settlements in that there had been an earlier claim for new leases which failed because applications to the tribunal were not made in time and that the tenants for whom he acted were particularly concerned to avoid delay and the costs which would be incurred if they applied to the tribunal. Cross-examined by Ms Cox, he agreed that he had not contacted the makers of any of the graphs on which he had exclusively relied for his relativity to establish whether their views had changed or to discuss their methodology. He agreed that in *Arrowdell Ltd v Coniston Court (North) Hove Ltd* (LRA/72/2005) the Lands Tribunal had disapproved of reliance on tribunal decisions and settlements where better evidence was available. He agreed that market evidence was of first importance and when Ms Cox asked him why he had not taken account of the sales in 2011 of a 59.33 year lease of Flat 5 Lodge Court and of a 125 year lease of Flat 42 Lodge Court he said first that he was unaware of them; he then said that because they dated from 2011 they were too historic to be relevant; and, finally, he said that the condition of Flat 5 was unknown at the date of the sale and might have been particularly bad, although he did not know that it was. He agreed that he should have mentioned those two market transactions and that in principle a deduction fell to be made from the sale price of the short lease to reflect rights under the Act. He was unable to point to any flaw in Ms Mariner's reasoning in relation to relativity. He agreed that the Beckett & Kay graphs of 2011 and 2013 suggested that relativities of mortgage-dependent properties were declining during that period they because of the economic down-turn

7. Ms Mariner produced the best sales particulars which she had been able to find relating to the sales of Flats 5 and 42, the photographs in which, and the language used to describe the flats, showed, she said, that both flats were in average condition at the date of the sales. She said that Mr Parish had been aware of the sales because she could recall having discussed them with him in the course of their negotiations in relation to new leases of four flats in 2012. She said that the correct practice in arriving at a relativity, which she had followed, was first to consider the market evidence, and, she said, the sales of Flats 5 and 42 were very good market evidence, and then to make appropriate adjustments, including, in the present case, an adjustment of 7.5% to reflect Act rights and an adjustment of 2.5% to reflect the fact that the lease of the subject flat was shorter than the lease of Flat 5 at the date of sale. She thus arrived at her proposed relativity of 77%. She also had regard to the settlements she had reached with Mr Parish in relation to four flats in Lodge Court, which suggested a relativity of 79.4% for the somewhat shorter lease of the subject flat. She then considered the most appropriate graphs, and in particular, in the present case, the Beckett & Kay mortgage-dependent graph dating from 2011, which suggested a relativity of around 73%. She said that in all respects save relativity she accepted the figure's in Mr Parish's valuation, which produced a very slightly higher premium than the one she had proposed, he having calculated the length of the existing term to more decimal places.

8. We are satisfied that Ms Mariner's proposed relativity is realistic and fair and we accept that it is correct. We regard her approach as impeccable. We were not impressed by the evidence of Mr Parish. We found it difficult to

understand why he had failed to mention in his report the sales in 2011 of Flats 5 and 42 of which, we are satisfied, he was or should have been aware. We also found it difficult to understand why he had relied on graphs based on material dating from 2008 and 2009 when he ought to have known that more recent evidence, in particular the Beckett & Kay 2011 and 2013 graphs, existed and were likely to be more compelling than graphs based on earlier material. Furthermore we would have expected him to refer in his written report to the settlements he had reached in 2012 in relation to other flats in the development, if only to distinguish them. He was quite unable to suggest any flaws in Ms Mariner's reasoning.

9. We accordingly determine that the premium to be paid for the new lease is £25,515 as set out in the valuation attached to this decision.

**Judge: Margaret Wilson**

37 Lodge Court, High Street, Hornchurch, Essex, RM12 6QR  
 Leasehold Reform Housing & Urban Development Act 1993 (as amended)  
 LO/LON/00AR/OLR/2013/0988

Passing Rent		£20.00	
YP 7% for 57.5 years		<u>13.99</u>	£280.00
Reversion		<u>£175,000.00</u>	
PV£1 deferred 57.5 years @ 5%		<u>0.0605</u>	<u>£10,588.00</u>
<b>FREEHOLDER'S PRESENT INTEREST</b>			<u>£10,868.00</u>
Reversion	£ 175,000.00	£175,000.00	
Less Present Lease Value	<u>77%</u> £134,750.00		
Less Freeholders Present Value	<u>£10,868.00</u>	<u>£145,618.00</u>	
		£29,382.00	
Share of Marriage Value		<u>50%</u>	
<b>MARRIAGE VALUE</b>			<u>£14,691.00</u>
<b>PREMIUM TO BE PAID</b>			<u>£25,559.00</u>